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Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Comprehensive report on the progress made by the International Criminal Tribunal for the Former Yugoslavia in reforming its legal aid system

Report of the Secretary-General

Summary

The General Assembly, in its resolution 57/288 of 20 December 2002, requested the Secretary-General to submit a comprehensive report on the progress made by the International Criminal Tribunal for the Former Yugoslavia in reforming its legal aid system, particularly with regard to rationalizing the costs of defence counsel and establishing indigence, to the Assembly at its fifty-eighth session.

The present report is submitted pursuant to that request and outlines the reforms implemented by the International Tribunal to improve its legal aid system.

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I. Introduction

1. In its resolution 57/288 of 20 December 2002, the General Assembly requested the Secretary-General to prepare a comprehensive report on the progress made by the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 in reforming its legal aid system, particularly with regard to rationalizing the costs of defence counsel and establishing indigence, for the main part of the fifty-eighth session of the Assembly.

2. The International Criminal Tribunal for the Former Yugoslavia established its legal aid system in 1995 to guarantee a fair trial under international criminal law and in accordance with international standards. The legal aid system has its legal basis in article 21 of the Statute of the Tribunal, the Rules of Procedure and Evidence, the Directive on Assignment of Defence Counsel and the administrative practice of the Registry as established in the Tribunal case law.

3. Article 21 of the International Tribunal's Statute states that an "accused shall be entitled to ... have legal assistance assigned to him in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it".

4. The International Tribunal's legal aid system is based on the following main principles:

(a) The accused is entitled to legal aid if he is partially or fully incapable of paying for his defence;

(b) Only necessary and reasonable expenses for the criminal defence are remunerated;

(c) The legal aid system requires defence to be efficient in its management of cases;

(d) The legal aid system must be able to attract defence counsel of good quality and standing, and with skills at a level comparable to the senior trial attorneys and trial attorneys working in the Tribunal's Office of the Prosecutor;

(e) The accused and the Prosecutor must have equality of procedural arms, supported by an appropriate level of resources.

5. An accused whose defence costs are covered by legal aid may challenge relevant aspects of the legal aid system of the Tribunal where the system is perceived by the defence not to provide adequate resources and therefore affect the principles of fair trial and equality of arms as enshrined in the Tribunal's Statute. It is important that an adequate level of legal aid resources be maintained to guarantee the proper administration of justice and the Tribunal's credibility.

6. The Registrar has made periodic amendments to the system since its inception. Some minor changes were made with regard to specific policy issues, such as those relating to invoicing of counsel for legal background research and travel costs for legal assistants. The Registry, with the approval of the Judges, also introduced important structural changes relating to the establishment of payment ceilings for the remuneration of counsel and rationalization of defence costs.

II. Defence counsel fees

7. In 1995, the Tribunal set hourly rates for counsel ranging between $80 and $110, depending on years of experience as a judge, prosecutor or attorney. Those rates covered counsel's remuneration and office expenses. In order to be reimbursed, counsel submitted detailed time sheets or similar documents that indicated the number of hours spent on the case and a description of the tasks performed.

8. In an effort to rationalize the system and to control costs, the Registry established a ceiling on the amount of allowable hours per month for the remuneration of an assigned counsel. From September 1996 onwards, lead and co-counsel were entitled to claim up to a maximum of 175 hours (including hearing hours) per month for remuneration provided that they submitted the required documentation and had the prior approval of the Registrar. The rationale behind establishing maximum allowable hours was that if the rates were multiplied by 175 hours, the total would equal approximately a monthly gross salary of a senior trial attorney or trial attorney at the Tribunal, plus office overhead costs. In addition, the maximum of 175 allowable hours was in line with the normal workload of a prosecutor attorney as well as a reasonable amount of billable hours by a defence attorney.

9. The hourly rates for legal assistants and defence investigators were set at between 15 and 25 euros. Prior to 1998, no monthly ceiling had been set for the remuneration of legal assistants and investigators. In 1998 the ceiling was set at 175 hours per person per month. In 1999, the ceiling was lowered to 125 hours per person per month.

10. Based upon the provisions of the Tribunal's Directive on Assignment of Counsel, the Registry developed a system for travel entitlements. Travel of counsel would be justified for client consultations, examination of witnesses and for hearings. Travel for defence investigators was authorized only for field trips and for legal assistants mainly for legal research and drafting and for limited review of case files in The Hague.

11. However, the system in place had its drawbacks. There was limited incentive for defence teams to perform efficiently, as the system was based on payments of monthly maximum allotments for as long as a case lasted. It was felt that the system could be subject to abuse by counsel invoicing for work not directly related to the case preparation or for work that was never completed. In addition, in cases where the pre-trial phase extended beyond its normal duration there could be a significant escalation of defence costs. Furthermore, administrative staff of the Registry bore a significant workload in the evaluation of the reasonableness of the invoices submitted, including finding a balance between an effective review of invoices and undue interference with the prerogatives of counsel in preparing their defence.

12. In order to reduce the potential for obstructive and dilatory tactics by assigned defence counsel, the Registry decided in 1998 that it would take into account delays in pre-trial and trial proceedings deemed to have clearly been caused by such tactics. In such cases, counsel invoices were reduced accordingly.

13. In January 2001, the Registry introduced its first major reform of the legal aid system. The reforms were motivated by the need to improve the allocation of

resources between cases varying in complexity, to create incentives for counsel to work efficiently and to explore possibilities for cost savings.

14. The Rules of Procedure and Evidence relating to misconduct of defence counsel were also modified in 2001 to allow Chambers to indicate, in their decisions and orders, whether a motion submitted by the defence appeared dilatory. On the basis of such assessments by a Trial Chamber and on its own review of the defence motions submitted, the Registry audited invoices and refused payment of certain fees.

15. The system of a monthly ceiling of working hours (with no limit for the duration of payment) was modified with the introduction of a payment ceiling system applicable to the entire duration of the pre-trial and appeal stages and effective in 2001. The system was an important advancement towards the implementation of a "lump sum" payment system for the trial stage that would come into effect at a later stage. The system employed several methods for rationalizing and simplifying the system, in particular, imposing maximum total remuneration for a case stage depending on the complexity of the case.

16. While payment was previously made for hours billed by defence regardless of the duration of the proceedings, this modified system is based on the allocation by Registry of a maximum number of hours, paid out in monthly disbursements for pre-trial and appeal stages based on invoiced hours.

17. The system ensures proportional allocation by attaching payment to the level of complexity of a case. The Registrar ranks cases according to difficult (1), very difficult (2) and leadership (3). Initially, all cases are ranked at level 1. The complexity of a case is then determined in consultation with the Trial Chamber, after considering any submission from defence counsel. Factors that are considered include the number and nature of counts in the indictment; possible amendments of the indictment; the nature of preliminary motions and challenges to the Tribunal's jurisdiction; the number of accused joined in the same case; the number of witnesses and documents involved; the geographical territory covered in the indictment; the previous ranking of the accused within the military or political hierarchy (where appropriate); and the legal issues expected to arise in the course of trial.

18. The ranking system guarantees that the appropriate level of resources is made available to defence teams, while the review by Registry of the invoices ensured that the funds were used efficiently. Annex I shows the allocation of hours based on the ranking system applicable for the pre-trial and appeal stage, which are still in effect.

19. Moreover, the system provides for some flexibility in that it allows approval by the Registrar of additional resources in exceptionally onerous level-3 cases involving an unexpected increase in workload. Ranking may be changed at any time to reflect the complexity of a particular case. Also, if the Registrar is convinced that an unexpected development beyond the control of the defence (such as extra disclosure by the prosecution) warrants additional hours, consideration is given to granting a small additional allotment of resources to cover the unforeseen development, while maintaining the current ranking of the case. The Registrar makes the determination based on whether the work carried out as a result of the circumstances was directly relevant and necessary to the preparation of the case. At the same time, a case can also be downgraded at any time depending on the circumstances.

20. However, the implementation of the payment ceiling system has its own drawbacks. Some defence teams exhaust their full allotment at the beginning of the pre-trial and appeal stages through heavy billing in the initial stages of the proceedings. In such cases, it is not unusual for defence counsel to approach the Registry, and often the Chambers, requesting additional resources. In most instances, the Registry has firmly refused the granting of additional resources. The defence consistently challenge its decisions.

21. In addition, a maximum allotment to be shared between all legal assistants and investigators assigned to the case has been set at 150 hours per month, which represented a significant reduction vis-à-vis the previous allotment of 125 hours per month for each assistant and investigator.

22. At the same time, changes were also made to the remuneration applicable during the trial phase of the proceedings. A maximum monthly allotment of 115 hours of preparation time was set in respect of the lead counsel and co-counsel. That ceiling did not apply to hearing hours, which were remunerated based on the actual hours spent by counsel in court.

23. The payment ceiling system approach appeared promising as a means of containing and controlling escalating costs. For that reason, at its 2002 plenary, the Tribunal decided to endorse the introduction of a pure lump sum system applicable only to new cases during the trial phase and effective in 2003.

24. The objectives of the lump sum system are:

(a) To provide defence teams with greater flexibility and incentive to manage their resources and time in the most efficient manner;

(b) To distinguish between the level of difficulty of various cases by providing more resources to extremely complex cases;

(c) To streamline procedure by allowing defence to submit more standardized invoices, which are reviewed before payment can be authorized;

(d) To facilitate responsible budgeting of the Tribunal's legal aid resources, by establishing a system that is less open to abuse and that allows for more reliable projections of cost.

25. The trial phase is broken down into the prosecution stage and the defence stage. In the event that either of the stages is expected to last longer than 12 months, the stage is further subdivided into two stages. Each stage is allocated a lump sum based on the level of complexity determined in consultation with the Trial Chamber (see annex II). Rather than rely on monthly invoices, the Registry disburses two thirds of the lump sum in equal monthly instalments, calculated in terms of the expected duration of the trial. The final third of the lump sum is held against the possibility of the trial stage running longer than earlier anticipated, when it can be used to provide additional monthly instalments. The holding of one third is intended to support the defence in the efficient utilization of resources and to provide a strong motivation to keep the time schedule. If a trial stage terminates ahead of schedule, the defence will still be entitled to the full lump sum; conversely, if the trial runs a little longer, the defence will not receive additional payments. Annex III shows the lump sum payments applicable according to the degree of difficulty of the trials.

26. The new system retains an element of flexibility to address unexpected factual and legal circumstances or developments in the course of trial. If the actual duration of the trial stage greatly exceeds the estimated duration as a result of unforeseen or exceptional circumstances beyond the control of the defence, the defence team has the opportunity at the end of the stage, or upon the exhaustion of the lump sum, to submit a request to the Registry to make an adjustment, in consultation with the Trial Chamber. Conversely, if the case were to end very early, as in the case of a guilty plea, the lump sum could, with the consent of the Chamber, be reduced proportionately.

27. This difference in approach promises greater efficiency, as it eliminates the previous problem of reviewing invoices and allows the Registry's judicial services to devote attention to more pressing matters. The defence teams will not be required to submit more than a pro forma invoice on a monthly basis and the Registry's judicial staff need not second-guess counsel's submission. Because any incentive for counsel to overstate the work performed has been eliminated, invoices need not be subject to critical review. Time- and resource-consuming litigation of invoices before Chambers or the Tribunal's President is also avoided.

III. Indigence

28. In order to establish indigence and to grant legal aid, an applicant for legal aid must complete a declaration of means, certified by an appropriate authority located either in the place of residence of the accused or any other place considered appropriate, under the circumstances, by the Registrar.

29. According to article 8 of the Directive on the Assignment of Defence Counsel, an accused person who requested the assignment of counsel had to produce documentation to support his claim to be unable to remunerate counsel. In determining whether applicants were indigent, the Registrar took into account factors such as the disposable income, the assets and the profile of the accused. While no specific threshold — in terms of income or assets — existed for a determination of indigence, the Registry calculated that a defence team engaged in the preparation or trial of a case would cost approximately $360,000 per year.

30. In accordance with rule 45 of the Rules of Procedure and Evidence, the Registrar assigned counsel from a list of lawyers who were interested in representing indigent suspects or accused and who were qualified under Tribunal rules to do so. The Registrar verified that the counsel chosen had the required qualification to defend a case before the Tribunal and that he or she was not the object of disciplinary procedures in his or her country. The counsel had to be a certified member of a bar or a lecturer of law at a university, speak one of the two working languages of the Court (English or French) and produce a curriculum vitae. The Tribunal has relaxed its language requirements in certain circumstances to allow counsel who spoke neither English nor French to represent an accused. In such cases, interpretation and translation are provided by the Tribunal within reason.

31. As stated in article 21 of the Statute, accused are only entitled to legal aid if unable to pay for their defence. When verifying the financial status of accused, initially the Registry was forced to rely mostly on the statements of accused and their verification by local authorities in the region. As indicated, with the average cost of legal representation for a case requiring intense preparation being upwards of

$360,000 per year, none of the accused was capable of bearing the costs of their defence until 2000.

32. Originally most accused had modest financial means and therefore no particular threshold for indigence was required. The arrest and detention of accused who had been at a higher rank in a political, military or other hierarchy — and who had correspondingly higher ability to pay — required an adaptation of the system to include standards for determining indigence.

33. A financial formula was specifically developed by the Registry, which takes into account the accused's income and assets, expenses for dependants, as well as the costs and necessary duration of legal aid, and other measures such as means in relation to the projected cost of legal representation.

34. Through the year 2000, legal aid could only be allowed either in full or not at all. In an effort to deal more realistically with the indigence of the accused, however, the Tribunal recognized that some accused might be capable of paying for representation in part. During a plenary session held on 15 December 2000, upon the initiative of the Registrar, the judges of the Tribunal approved an amendment to the Directive on Assignment of Defence Counsel that allows the Registry to pay only a portion of the costs incurred by the representation of an accused when the accused possesses the means to remunerate counsel in part.

35. In its assessment of indigence, the Registry takes into account assets that the accused directly or indirectly enjoys or freely disposes of, including, but not limited to, direct income, bank accounts, real or personal property, stocks and bonds. The means of the accused's spouse as well as those of all persons with whom he habitually resides are also taken into consideration.

36. The Registry further determines the monthly disposable income of the accused. The calculation of the monthly disposable income is obtained based on the official value of the property owned by the accused and by members of his family with whom he usually resides as well as the monthly income of the accused and his family members. The number of members of the accused's household and average expenditure of the household are also taken into consideration.

37. The contribution of the accused to the costs of his defence is calculated according to an established formula, proportionate to his monthly disposable income. Accordingly, the Registry does not remunerate a certain amount of working hours allocated under the legal aid system to some members of the accused's defence team. The costs of those hours are paid directly by the accused under conditions negotiated between the accused and the defence. The Registry thus ensures that the accused's contribution does not exhaust the means of his household, deplete all liquid means and assets or result in a lack of support for the accused's dependants.

38. Since the Directive was amended, the Registrar has declared six accused at the pre-trial stage partially indigent. As it would have been legally difficult and resource-intensive to obtain cash contributions from the accused, his or her contribution is deducted from the allowance granted by the Registry under the legal aid system.

39. The ability of the accused to contribute to the costs of his or her defence is reassessed regularly.

IV. Others issues related to the legal aid system

A. Financial investigations

40. One of the most notable measures taken to secure the integrity of the legal aid system is the Tribunal's appointment of a financial investigator in March 2002 to assess the ability of the accused to cover the costs of defence. The investigations allow the Registry to ensure that only the truly indigent are provided with counsel and that issues of professional conduct are addressed.

41. As noted above, full legal aid has already been cut back to partial legal aid for six accused, based on interviews and evidence gathered on field missions. Additional investigations are under way, that promise additional savings.

42. These financial investigations have also addressed the issue of "fee splitting" in which counsel and the accused arrange to share lawyer fees. In addition, the Registrar prepared an amendment for the revision of the Code of Professional Conduct for Defence Counsel explicitly prohibiting fee-splitting arrangements. The amendment entered into force in August 2002.

43. The investigator, in cooperation with lawyers, has also uncovered other financial improprieties, such as over-billing. The deterrent effect of the investigator's work is certain to discourage other abuses by defence counsel.

B. Association of Defence Counsel

44. At the judges' plenary meeting in July 2002, an important reform to the legal aid system was adopted with the endorsement of the Tribunal-specific professional association of counsel recognized by the Registrar. The reforms had been the subject of intense discussion between the Registry and defence counsel and resulted in the amendment of article 44 (A) of the Rules of Procedure and Evidence to require counsel's membership in the Association of Defence Counsel, which was established in September 2002.

45. At the same plenary, the judges also approved a model founding document for such an association of counsel. The constitution of the association was based on a document drafted by a working group of two judges, defence counsel and legal counsel in Registry. The statute gives the association power to carry out a number of important functions, including training and supporting counsel. The Association of Defence Counsel also has a disciplinary committee and may police itself for ethical problems in accordance with the Code of Conduct. It has already acted to suspend a lawyer's membership.

C. Ethics and disciplinary reform

46. Amendments to the Code of Conduct in 2002 created a means of addressing ethical violations through the establishment of a Disciplinary Panel. The Panel now has two disciplinary complaints of one counsel against another now before it. The Panel and its appeals organ, the Disciplinary Board, which includes three judges, has important powers for securing counsel's adherence to the Code of Conduct. As

already noted, the Code has been amended to explicitly prohibit fee-splitting arrangements. In addition, family members and friends of accused are no longer eligible to be assigned under the legal aid system. That change should also curtail abuses of the system.

D. External factors affecting legal aid costs

47. The costs of a legal aid defence, much like the costs of a privately funded defence, depend on a variety of external factors, which are beyond the control of the Registry and limit the Registry's ability to contain costs. Such factors include Chambers' control over the application of the principle of fair trial, the length and complexity of the Prosecution's case, the willingness of States to open their archives and the cooperation of witnesses.

48. Often, disclosure of exculpatory and other materials by the Prosecution can play a key role in determining the length of the trial and the costs associated with it. In some cases, there can be thousands of pages of disclosure material, imposing an enormous burden on the defence and a correspondingly heavy cost on the Registry. Moreover, the Prosecution's disclosure of documents continues throughout the pre-trial, trial and even post-trial proceedings.

49. In unusual and compelling circumstances, an accused may be allowed to change his defence counsel. A recent example involved a defence counsel who was suspended from practice in his home jurisdiction less than two weeks before the trial was set to begin. While the Registry has been effective in minimizing the costs of such replacements, there are cases where the defence costs inevitably increase as a result.

50. The Tribunal has been confronted with two cases in which defendants have exercised their right to defend themselves. The Chamber found it necessary to assign amici curiae paid by the Tribunal to one such case in order to secure the rights of the accused. It remains to be seen how the other case will be handled, but the Chamber has already indicated its intention to require the appointment of "standby" counsel.

51. In order to reduce the costs and delays associated with changes of assigned counsel, the Registry has allowed accused to choose new counsel only where there is evidence of exceptional circumstances, such as complete breakdown in the relationship between counsel and client, or if counsel is ordered to withdraw from a case for ethical reasons.

E. Future reforms under consideration

52. To monitor the new lump sum payment scheme for trial and the continuing payment ceiling scheme for pre-trial and appeal, the Registry will be implementing a financial tracking system during 2003 with the cooperation of the Tribunal's Information Technology Section. The automated system will allow the Office for Legal Aid and Detention Matters in the Registry to track defence counsel expenditures and forecast future budgetary needs in a more timely and efficient manner.

53. The Tribunal is fostering the use of automated means for trial procedures. Such tools are employed to rationalize the procedures by, for example, automating the

presentation of documentary and video evidence in court, by facilitating the electronic disclosure of material to the defence and by utilizing computerized research tools for the finding of jurisprudence. For example, the judicial database, introduced in 2003, gives defence counsel access to the Tribunal's public filings in a searchable database available through computers in the Tribunal's library. By the end of 2003, the entire contents of the Tribunal's filings will be available on that database. Eventually, the database should be available to defence counsels on their own computers via the Internet.

54. Among the most problematic issues in the assignment of counsel is facilitating the accused's right to choose a lawyer while ensuring quality of assigned counsel. That right does not exist in all legal systems, but it has been recognized in Tribunal case law with some restrictions. As explained above, in 2001 the Registrar amended the Directive on Assignment of Counsel to exclude family members of accused and counsel from assignment to defence teams. The Tribunal has recently established a working group of three judges and the Registrar to address other assignment-related issues, including the accused's selection of poorly qualified lawyers or lawyers whose ethics raise questions.

V. Conclusion

55. Legal aid systems are inherently difficult to administer, as sensitive balances have to be struck between sometimes conflicting objectives. Respecting the accused's right to choose counsel may run counter to the Tribunal's responsibility to provide competent and effective counsel. The need to maintain equality of arms between the parties has to be accommodated within budgetary constraints.

56. The legal aid system at the Tribunal has gone a long way towards addressing those difficulties and striking the balances in the best way possible. Efforts at reform continue, promising further rationalization of costs, and more effective stewardship of the legal aid resources, without compromising the principles of justice the legal aid system must serve.

Annex I

Ranking and allocation of resources

The table below describes the maximum allotments for lead counsel, co-counsel, legal assistants and investigators applicable to the pre-trial and appeal phases of the proceedings. It also shows the maximum monthly allotments for the trial phase.

	Phase of the case						
	Pre-trial case level; estimated minimum preparation time				*Appeal case level; estimated minimum preparation time*		
Team member	*Case level 1 (difficult); four months*	*Case level 2 (very difficult); six months*	*Case level 3 (leadership cases); eight months*	*Trial*	*Case level 1 (difficult); three months*	*Case level 2 (very difficult); four months*	*Case level 3 (leadership cases); six months*
Lead counsel	1 400 hours total, plus all hearing hours for one counsel	2 100 hours total, plus all hearing hours for one counsel	2 800 hours total, plus all hearing hours for one counsel	All hearing hours; average monthly preparation time over the duration of trial: 115 hours.	1 050 hours total, plus all hearing hours	1 400 hours total, plus all hearing hours	2 100 hours total, plus all hearing hours
Co-counsel				All hearing hours; average monthly preparation time over the duration of trial: 115 hours.			
Legal assistants or investigators	2 000 hours total	3 000 hours total	4 000 hours total	Maximum average monthly working hours over the duration of trial: 150.	450 hours total	600 hours total	900 hours total
Total hours	**3 400**	**5 100**	**6 800**	**Total not applicable**	**1 500**	**2 000**	**3 000**

Annex II

Duration of trial stages

1. An essential element in the revised 2003 system is the assessment of the duration of a trial stage. Because the Trial Chamber is ultimately responsible for controlling the proceedings, the estimated duration of a stage is calculated by consulting with the Trial Chamber to determine how many hours have been allocated given the following factors: the examination-in-chief, the cross-examination, the re-examination, judges' questions, and how many rule 92 bis statements (given by witnesses in writing only) are expected.

2. Once the total time for witness testimony and procedural questions is estimated, the Registry uses the following parameters in order to estimate the duration of any stage: the number of available court days per year, as set out in the Tribunal's budget parameters; and the anticipated level of courtroom usage.

3. The anticipated duration of a court session at present is 3.83 hours of actual hearing time. The average court time of a trial in a given year has been estimated at 145.5 days. Therefore, the projected session time in a one-month period is 46.44 hours, a figure reached by performing the following equation: 145.5 ÷ 12 x 3.83 = 46.44 hours.

4. In order to determine the estimated duration of a stage, the total hearing times predicted for the stage (examination-in-chief + cross-examination + re-examination + judges' questions + procedural issues) is divided by the maximum available hearing hours per month. Calculations are thus tailored to reflect the particular situations of each case and each Trial Chamber.

Annex III

Calculation of lump sum payments for a trial stage

1. The lump sum for a trial stage is calculated by multiplying the following monthly allotments by the estimated number of months of the duration of the case. These figures have been established based on counsel invoices submitted for the prosecution stage of previous cases before the Tribunal. The allotment per level are:

Degree of difficulty	*Allotment (United States dollars)*
1 Difficult	33 200
2 Very difficult	36 550
3 Extremely difficult/leadership	40 150

2. Since the duration of a case is likely to vary depending on the level of complexity, the ultimate difference will not necessarily be reflected in the above allotments. The following table therefore illustrates the full level of resources that would be allocated for a level-1 prosecution stage of trial predicted to last 4 months, a level-2 stage predicted to last 7 months and a level-3 stage predicted to last 10 months. The fixed sums for a particular stage are:

Degree of difficulty	*Allotment (United States dollars)*	*Estimated duration (months)*	*Fixed sum (United States dollars)*
1 Difficult	33 200	4	132 800
2 Very difficult	36 550	7	255 850
3 Extremely difficult/leadership	40 150	10	401 500

3. The monthly stipend is an advance payment of the lump sum in instalments and does not represent a monthly allotment of hours. The stipend is calculated by dividing the fixed sum by the estimated number of months and multiplying that figure by two thirds.

4. The rationale for retaining one third of the lump sum is to ensure that the defence team continues to receive a stipend for the entire duration of the stage, regardless of the actual duration of the stage. This is consistent with the ethos of a lump sum system, that is, payments should be linked to the work done for a particular stage of the proceedings rather than to monthly allotments for the actual duration of the proceedings.

5. At the end of the stage, the defence team receives the full lump sum initially set for that stage, less any disbursements already received in the form of monthly stipends.